

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

JOSEPH LEE WILSON,
Defendant.

NO. 2:18-cr-00132-RAJ

ORDER ON DEFENDANT'S MOTION
FOR COMPASSIONATE RELEASE

I. BACKGROUND

This matter comes before the Court on Defendant Joseph Lee Wilson's motion for compassionate release. Dkt. 819. Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby **DENIES** the motion for the reasons explained herein.

Following a lengthy investigation and indictment involving several other defendants, Mr. Wilson was charged with conspiracy to traffic controlled substances, drug trafficking, and related firearms offenses. On June 14, 2019, he pled guilty to Conspiracy to Distribute Controlled Substances, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 846, and Carrying a Firearm During and in Relation to a Drug Trafficking Crime in violation of 18 U.S.C § 924 (c)(1)(A) and 2. Dkt. 532.

1 On October 25, 2019, the Court sentenced Mr. Wilson to 72 months of
 2 incarceration, to be followed by three years of supervised release. Dkt. 671. He is
 3 currently housed at Federal Correctional Institution Lompoc and is scheduled to be
 4 released on July 17, 2023.

5 On July 20, 2020, Mr. Wilson filed the instant motion requesting compassionate
 6 release and a sentence reduction to time served. Mr. Wilson argues that his underlying
 7 chronic medical conditions place him at risk of serious complications after having
 8 contracted coronavirus-19 (COVID-19) while incarcerated, that FCI Lompoc is unable to
 9 provide a safe environment for him to recover, and that his race is an additional risk
 10 factor for complications from the disease. Dkt. 819.

11 The government opposes the motion, responding that Mr. Wilson has not provided
 12 reasons that would support a finding by this Court that extraordinary and compelling
 13 circumstances exist to warrant his early release, and that Mr. Wilson has failed to
 14 establish he no longer poses a danger to others and the community. Dkt. 825.

15 II. DISCUSSION

16 A. Legal Standard for Compassionate Release

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 18 18 U.S.C. § 3582(c)(1)(A) allows a court to reduce a term of imprisonment if
 19 “extraordinary and compelling reasons warrant such a reduction” and “such a reduction is
 20 consistent with applicable policy statements issued by the Sentencing Commission.” The
 21 Sentencing Commission’s policy statement, in turn, says that a court may reduce a term
 22 of imprisonment if “the defendant is not a danger to the safety of any other person or to
 23 the community” and “extraordinary and compelling reasons warrant such a reduction.”
 24 United States Sentencing Guidelines (“USSG”) § 1B1.13. The policy statement clarifies
 25 that such reasons exist when (1) “the defendant is suffering from a terminal illness” or (2)
 26 “the defendant is suffering from a serious physical or mental condition . . . that
 27 substantially diminishes the ability of the defendant to provide self-care within the
 28 environment of a correctional facility and from which he or she is not expected to

1 recover.” USSG § 1B1.13 cmt. n.1. The policy statement also directs a court to consider
 2 the factors set forth in 18 U.S.C. § 3553(a) in deciding whether compassionate release is
 3 appropriate and what form compassionate release should take. USSC § 1B1.13 cmt. n.4.

4 Mr. Wilson’s motion seeks a reduction in sentence under 18 U.S.C. §
 5 3582(c)(1)(A), as amended by the First Step Act of 2018. As amended, § 3582(c)(1)(A)
 6 permits an inmate, who satisfies certain statutorily mandated conditions, to file a motion
 7 with the sentencing court for “compassionate release.” As relevant to Mr. Wilson’s
 8 motion, the statute now provides:

9 (c) Modification of an imposed term of imprisonment. --The court
 10 may not modify a term of imprisonment once it has been imposed
 11 except that--

12 (1) in any case--

13 (A) the court, upon motion of the Director of the Bureau of Prisons, or
 14 upon motion of the defendant after the defendant has fully exhausted
 15 all administrative rights to appeal a failure of the Bureau of Prisons to
 16 bring a motion on the defendant’s behalf or the lapse of 30 days from
 17 the receipt of such a request by the warden of the defendant’s facility,
 18 whichever is earlier, may reduce the term of imprisonment (and may
 19 impose a term of probation or supervised release with or without
 20 conditions that does not exceed the unserved portion of the original
 21 term of imprisonment), after considering the factors set forth in
 22 section 3553(a) to the extent that they are applicable, if it finds that--

23 (i) extraordinary and compelling reasons warrant such a reduction;

24 . . .

25 and that such a reduction is consistent with applicable policy
 26 statements issued by the Sentencing Commission.

27 18 U.S.C. § 3582(c)(1)(A).

28 The relevant statute gives this Court authority to reduce a previously imposed
 sentence if three requirements are satisfied: (1) the inmate has either exhausted
 administrative review of the Bureau of Prison’s failure to bring such a motion, or waited
 until 30 days after the request was made to the warden where the inmate is housed if that
 is earlier; (2) the inmate has presented extraordinary and compelling reasons for the

1 requested reduction; and (3) the reduction is consistent with the Sentencing
2 Commission's policy statement.

3 **B. Exhaustion of Administrative Remedies**

4
5 Mr. Wilson has met the exhaustion requirement. While it is not clear when Mr.
6 Wilson submitted a request for compassionate release to the warden at FCI Lompoc, his
7 request was denied by the acting warden on May 26, 2020. Dkt. 819, Ex. 1. As the
8 statutorily required 30-day period has expired, Mr. Wilson's motion is properly before
9 the Court.

10 **C. Extraordinary and Compelling Circumstances.**

11 The Court must next determine if extraordinary and compelling circumstances
12 warrant a reduction of Mr. Wilson's term of imprisonment. *See* 18 U.S.C.
13 § 3582(c)(1)(A)(i); USSG § 1B1.13.

14 The policy statement referenced in § 3582(c)(1) was promulgated by the
15 Sentencing Commission pursuant to the authority Congress vested in it in 28 U.S.C.
16 § 994. That statute provides:

17 The Commission, in promulgating general policy statements regarding the
18 sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall
19 describe what should be considered extraordinary and compelling reasons for
20 sentence reduction, including the criteria to be applied and a list of specific
21 examples. Rehabilitation of the defendant alone shall not be considered an
22 extraordinary and compelling reason.
23 28 U.S.C. § 994(f).

24 Consistent with this statute, the applicable policy statement can be found at
25 Section 1B1.13 of the United States Sentencing Guidelines. That statement provides:

26 Upon motion of the Director of the Bureau of Prisons under 18 U.S.C.
27 § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may
28 impose a term of supervised release with or without conditions that does not
exceed the unserved portion of the original term of imprisonment) if, after
considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they
are applicable, the court determines that--

1 (1)(A) Extraordinary and compelling reasons warrant the reduction...

2 (2) The defendant is not a danger to the safety of any other person or to the
3 community, as provided in 18 U.S.C. 3142(g); and

4 (3) The defendant is not a danger to the safety of any other person or to the
5 community, as provided in 18 U.S.C. § 3142(g); and

(4) The reduction is consistent with this policy statement.

6 U.S.S.G. § 1B1.13 (2019).

7 In the commentary, the Commission goes on to explain what constitutes
8 “extraordinary and compelling reasons” to support a reduction in sentence. Specifically,
9 Application Note 1 provides that extraordinary and compelling reasons exist if the
10 defendant is suffering from a serious physical or medical condition...that substantially
11 diminishes the ability of the defendant to provide self-care within the environment of a
12 correctional facility and from which he or she is not expected to recover.” U.S.S.G. §
13 1B1.13 cmt.n.1.

14 On May 7, 2020, Mr. Wilson contracted COVID-19 while incarcerated at FCI
15 Lompoc. Dkt. 821, at 81. Mr. Wilson contends he suffers from long-standing chronic
16 underlying medical conditions that elevate his risk for severe complications from having
17 already contracted COVID-19, including lingering pain, discomfort, and lung weakness
18 from a 2017 automobile accident in which he sustained a broken neck, a fractured spine,
19 a collapsed lung, and broken ribs. Dkt. 819, PSR ¶ 126. He indicates he has suffered
20 from gout since 2015. Dkt. 819, PSR ¶ 127. Mr. Wilson’s half-sister, who was
21 interviewed at the time of preparation of the Presentence Report for sentencing, indicated
22 she believed Mr. Wilson had high blood pressure. Dkt. 819, PSR ¶ 128.

24 When Mr. Wilson arrived at FCI Lompoc after being sentenced in late 2019, he
25 states that other health issues were documented by medical providers at the facility,
26 including post-traumatic stress syndrome and arthropathy in his spine as lingering
27 conditions from his 2017 auto accident. Dkt. 819.

1 Mr. Wilson indicates these symptoms remain present and have even worsened
2 since he has been deemed recovered from COVID-19. He claims he has chronic fatigue,
3 chest pain, shortness of breath, weakness in his legs, persistent high blood pressure, and
4 prediabetes. Dkt. 821, at 17 and 22. Mr. Wilson has indicated to his counsel he is
5 experiencing dizziness, severe fatigue, prostate issues, shortness of breath, and chest
6 pains, evidencing the continued effects of having contracted COVID-19. Dkt. 819.

7 Mr. Wilson argues that the extent of the COVID-19 outbreak at FCI Lompoc,
8 which has resulted in a federal class action lawsuit and issuance of injunctive relief
9 against the facility, is evidence the medical staff and administrators at FCI Lompoc are
10 unable to adequately treat his medical conditions, and cannot provide the safe and
11 sanitary environment necessary for his recovery from COVID-19. Dkt. 819.

12 Finally, Mr. Wilson maintains that as a Black man, the data from the Centers for
13 Disease Control and Prevention (CDC) indicate he is at greater risk than a similarly
14 situated non-minority to require hospitalization for COVID-19. Dkt. 819. While Mr.
15 Wilson raises his race as a factor for consideration, other than this reference, he provides
16 no evidence on this issue for the Court's consideration.

17 In response, the government argues Mr. Wilson has failed to establish that the
18 risks of COVID-19 are an extraordinary and compelling reasons for the early termination
19 of his custodial sentence. The government indicates that while Mr. Wilson did test
20 positive for COVID-19 on May 7, 2020, his medical records dating from May 8, 2020, to
21 May 22, 2020, indicate he did not have a high fever and that he denied having a cough,
22 headache, fatigue, and shortness of breath, the recognized symptoms of COVID-19.
23 Dkt. 821, at 64-65. By May 22, 2020, the records reflect that his COVID-19 had
24 resolved. *Id.* at 23. The government argues Mr. Wilson selectively relies on his medical
25 records when they confirm he recently reported shortness of breath, but challenges the
26 accuracy of the records when they indicate he did not have many COVID-19 symptoms.
27 The government reasons that given Mr. Wilson survived COVID-19 without requiring
28

1 hospitalization, this suggests he is not at risk of suffering the most severe consequences
2 of having contracted COVID-19. Dkt. 825.

3 The government further contends Mr. Wilson has not provided evidence that he
4 suffers from any of the chronic medical conditions the CDC recognizes as putting people
5 at increased risk of severe illness from COVID-19. The government indicates Mr.
6 Wilson has been treated for the effects from his 2017 car accident, gout, prediabetes,
7 post-traumatic stress disorder, and a benign skin condition, none of which are considered
8 risk factors by the CDC. Dkt. 821, at 22. While acknowledging that the CDC has
9 indicated Mr. Wilson's at-times elevated blood pressure might be a risk factor, the
10 government argues that particular risk has not manifested in Mr. Wilson, as he was able
11 to recover from COVID-19 without hospitalization. Dkt. 825.

12 The government argues that, in sum, Mr. Wilson's medical records provide
13 evidence that he suffered a mostly asymptomatic case of COVID-19 that resolved after
14 two weeks, that the Bureau of Prisons (BOP) provided him with medical care both before
15 and after his COVID-19 diagnosis, and that there's no indication that any of his other
16 claimed medical conditions place him at greater risk of severe complications from
17 COVID-19. Dkt. 825.

18 The government concedes Mr. Wilson is incarcerated at a BOP facility that has
19 experienced an outbreak of COVID-19 and provides evidence of the efforts that have
20 been made at FCI Lompoc to test, screen, and control the spread of the virus. The
21 government disputes Mr. Wilson's claim that he is not receiving medical care, pointing to
22 the records provided by the BOP to the contrary, indicating Mr. Wilson's conditions are
23 regularly being evaluated and addressed. Dkt. 825.

24 Mr. Wilson argues in reply that his medical records from the BOP are not accurate
25 and are incomplete. He indicates the medical conditions he suffered before he contracted
26 COVID-19 might have placed him in a weakened condition which may have made him
27 more susceptible to the virus and more likely to suffer long-term consequences of the
28 disease. He contends his high blood pressure continues to be a risk to his health if he

1 remains incarcerated, and indicates the government is downplaying his high blood
2 pressure as a risk factor of COVID-19. Dkt. 828.

3 When an inmate has health conditions that make them significantly more
4 vulnerable to COVID-19, that likewise may constitute an extraordinary and compelling
5 circumstance. *See e.g., United States v. Cosgrove*, Case No. CR15-0230-RSM, -F. Supp.
6 3rd-, 2020 WL 1875509 (W.D. Wash. April 15, 2020; *United States v. Dorsey*, Case No.
7 CR16-0138-BLW-JCC, 2020WL 2562878 (W.D. Wash. May 19, 2020).

8 While some courts have held, as argued by the Government, that the Sentencing
9 Commission's policy statement on compassionate release remains controlling in the wake
10 of the First Step Act, this Court agrees with the position taken by numerous courts that
11 the "old policy statement provides helpful guidance, [but]...does not constrain [a court's]
12 independent assessment of whether 'extraordinary and compelling reasons' warrant a
13 sentence reduction under § 3852(c)(1)(A)." *United States v. Cosgrove, Id.; United States*
14 *v. Rodriguez*, 2020 WL 1627331, (E.D. Penn. Apr. 1, 2020; *United States v. Almontes*,
15 2020 WL 1812713 (D. Conn. Apr. 9, 2020); *United States v. Haynes*, No. 93 CR1043
16 (RJD), 2020 WL 1941478 (E.D. N.Y. Apr. 22, 2020); and *United States v. Maumau*, No.
17 2:08-cr-00758-TC-11, 2020 WL 806121 (D. Utah, Feb. 18, 2020).

18 Mr. Wilson has placed much weight on the class action litigation currently being
19 litigated regarding the facility where he is being housed. The government does not
20 dispute that the COVID-19 pandemic poses a serious threat to public health, but the
21 Court agrees that in light of the medical records in evidence, Mr. Wilson has failed to
22 provide evidence that the virus poses an extraordinary and compelling reason for his
23 health warranting his release. Moreover, even in that litigation, the Court did not
24 immediately release the petitioners. Rather, the Court directed the Respondents to make
25 prompt determinations of the eligibility of home confinement and compassionate release
26 as to Lompoc inmates who were at higher risk for severe illness or death from COVID-
27 19. Dkt. 819, at 58. This Court does not find that Mr. Wilson fits in that category based
28 upon the record submitted.

1 Mr. Wilson challenges whether his medical records are accurate. The Court
 2 agrees with the government as to Mr. Wilson's criticism of his medical records. When
 3 they indicate that he did not have many COVID-19 symptoms, he disagrees, but he
 4 confirms the accuracy when they support his position. Dkt. 825, p. 11-12. Despite these
 5 inconsistencies, Mr. Wilson appears to have recovered from the virus. This was
 6 accomplished without hospitalization or advanced treatment suggesting he is not at risk
 7 of suffering the most severe effects of COVID-19. The record is also devoid of any
 8 evidence to suggest that his history of overcoming COVID-19 puts him at higher risk of
 9 severe illness from any reoccurrence of the virus.

10 Mr. Wilson has also listed a host of conditions that are documented in the medical
 11 records. These include treatment for gout, elevated blood pressure, prediabetes, post-
 12 traumatic stress disorder, effects from a previous car accident, and a benign skin
 13 neoplasm. Dkt. 821, at 22. None of these conditions match the eight factors the CDC
 14 has listed that put people of any age at greater risk of severe illness from COVID-19. *See*
 15 *People of Any Age with Underlying Conditions*, Centers for Disease Control and
 16 Prevention, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people -](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)
 17 [with-medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html) (July 22, 2020).

18 As to Mr. Wilson's hypertension claim, at best, the CDC has only concluded to
 19 date that it might be a risk factor. This contention alone is not sufficient to justify or
 20 warrant conclusion that Mr. Wilson's risks of COVID-19 warrant an extraordinary and
 21 compelling reason for early termination of his sentence.

22 **D. Safety of Others and 18 U.S.C. §3553 (a) Factors**

23 The Court next turns to whether Mr. Wilson presents a danger to the safety of any
 24 other person or to the community. *See* U.S.S.G. §1B1.13(2). In making this
 25 determination, the Court looks to the nature and circumstances of the underlying offense,
 26 the weight of evidence against him, his history and characteristics, and the nature and
 27 seriousness of the danger his release would pose to any person or the community.
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1 18 U.S.C. §3142(g). The Court may not reduce a defendant's sentence unless it finds that
2 "the defendant is not a danger to the safety of any other person or to the community, as
3 provided in 18 U.S.C. § 3142(g)."

4 While conceding he has a significant criminal history, Mr. Wilson points out that
5 his last felony conviction before the instant offense occurred over fifteen years ago.
6 While acknowledging he has a conviction relating to a firearm, he claims he has never
7 used a firearm to threaten or hurt anyone. Dkt. 819.

8 The government argues Mr. Wilson's lengthy criminal history, the nature of his
9 convictions, the nature of his current offense, and his repeated possession of firearms
10 preclude a finding that Mr. Wilson is no longer a danger, and that nothing about the
11 current global COVID-19 pandemic reduces his danger to others and to the community.
12 Dkt. 825.

13 Even if this Court had determined that Mr. Wilson had established extraordinary
14 and compelling reasons to make him eligible for a reduction in his sentence, the Court
15 would not exercise its discretion to do so here.

16 While much of Mr. Wilson's criminal history is dated, his conduct in the instant
17 case warrants continued concern over his danger to the community. Mr. Wilson was
18 involved in a large drug conspiracy and was involved in the distribution of kilogram
19 quantities of cocaine. He was repeatedly armed throughout the conspiracy, he was
20 stopped in a car carrying a firearm in early 2017, and he had a gun when he was arrested
21 in his home in June 2018.

22 In addition, Mr. Wilson has repeated violations of the conditions of supervision for
23 failing to report, failing to complete required treatment, and using illegal drugs. These
24 violations and the totality of his criminal conduct demonstrate that Mr. Wilson is a
25 danger to the safety of the community as reflected in Title 18 U.S.C. §3142 (g).

26 Finally, with respect to avoiding sentencing disparities, given the number of
27 defendants in this very large drug trafficking conspiracy, the government acknowledges
28 the effort this Court made to distinguish among the many defendants, imposing different

1 sentences as the circumstances warranted. The government distinguishes Mr. Wilson
2 from other defendants in this conspiracy who have brought compassionate release
3 motions, indicating the Court has denied others, largely on the same grounds brought
4 here. The government further distinguishes Mr. Wilson from his co-defendant Edward
5 Deandre Locke, whose motion for compassionate release this Court granted, indicating
6 Mr. Locke had numerous longstanding health conditions, many of which have been
7 identified by the CDC as increasing his risk of serious complications from COVID-19,
8 and the fact that Mr. Locke was on pretrial release and complied with the conditions of
9 that release for more than 18 months. Dkt. 825. The Court adopts the government's
10 analysis on this consideration. Hence, no disparity in sentencing will occur with this
11 denial or in consideration of other defendants who have been granted or denied release.

12 13 III. CONCLUSION

14 For the foregoing reasons, Defendant Joseph Lee Wilson's motion for
15 compassionate release is **DENIED**.

16 DATED this 20th day of August, 2020.

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20 The Honorable Richard A. Jones
21 United States District Judge
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